ZAIBAR AUTO (MALAYSIA) SDN. BHD. & ANOR.

v.

SHELL MALAYSIA TRADING SDN. BHD.

COURT OF APPEAL, KUALA LUMPUR
TUAN GOPAL SRI RAM JCA
DATO' SITI NORMA YAAKOB JCA
DATO' ABDUL MALEK AHMAD JCA
[CIVIL APPEAL NO: W 02-464 OF 1995]
18 MARCH 1996

CIVIL PROCEDURE: *Summary possession of land - Order 89 Rules of the High Court 1980 - Applicability - Whether to apply only to squatters - Protection given by O. 89 to occupiers of land - Whether could extend to trespassers.*

LAND LAW: *Summary possession of land - Order 89 Rules of the High Court 1980 - Whether occupier a trespasser - Whether land occupied with consent of registered proprietor - Whether licence to occupy given by predecessor in title.*

In 1991 the respondent bought a piece of land from Metro Murni Sdn. Bhd. ("Metro Murni"). In that same year, registration was effected in respect of the transfer of the land to the respondent and the respondent, thus, became the registered proprietor thereof. Some two years later, in 1993, the first appellant bought all the shares of Metro Murni from the latter's previous shareholders. Metro Murni thereafter sought to abort the sale of the land and, having sent the respondent a letter of termination, retook possession of the land. Metro Murni then let the appellants into possession.

Following the respondent's application under O. 89 r. 1 Rules of the High Court 1980 (RHC) for possession of the land, the learned Judge invoked the Court's summary jurisdiction and in consequence made an order of vacant possession against the appellants. The appellants appealed, and before the learned Judges a question arose as to whether the appellants were on the land as trespassers, or whether they were there with the consent or by licence of the respondent's predecessor in title, and hence whether summary jurisdiction as conferred by O. 89 could properly be invoked against them.

Held:

[1] Order 89 r. 1 of RHC applies to squatters, pure and simple. It does not apply to tenants who are holding over. It does not apply to one who enters upon land or who remains in occupation with the consent of the applicant under the Order or any predecessor in title of such an applicant. It does not apply to persons who are in occupation under a legitimate expectation of receiving, from the State Authority, issue documents of title to the portions they occupy.

[2] This is not a case where the appellants came onto the land with Metro Murni's consent or licence before the respondent acquired title by registration. After the registering authority endorsed the appropriate memorial in the respondent's favour upon the register document of title, all rights of ownership were vested in the respondent and no person, other than one authorised by the respondent, could validly consent to the land being occupied by a third party or grant a valid licence to such an occupant. As it is no consent was given or licence granted by the respondent.

[3] The facts showed that the appellants have always been in unlawful occupation of the land. They were thus trespassers. This being the case, the protection given by the relevant words in O. 89 do not extend to them and the learned Judge was right in giving summary relief to the respondents.

[Appeal dismissed]

***[Bahasa Malaysia** Translation of Heaadnotes]*

***PROSEDUR SIVIL:** Pemilikan terus tanah - Aturan 89 Kaedah-Kaedah Mahkamah Tinggi 1980 - Keterterapan - Samada terpakai hanya kepada setinggan - Perlindungan yang diberi oleh A. 89 kepada penghuni tanah - Samada boleh dilanjutkan kepada penceroboh.*

***UNDANG-UNDANG TANAH:** Pemilikan terus tanah - Aturan 89 Kaedah-kaedah Mahkamah Tinggi 1980 - Samada penghuni seorang penceroboh - Samada tanah diduduki dengan kebenaran tuanpunya tanah berdaftar - Samada lesen untuk menduduki diberikan oleh pendulu dalam hakmilik.*

Dalam tahun 1991 responden telah membeli sebidang tanah daripada Metro Murni Sdn Bhd (Metro Murni). Dalam tahun yang sama itu, pendaftaran telah dikuatkuasakan berhubung dengan pindahmilik tanah tersebut kepada responden dan responden, dengan itu, telah menjadi tuanpunya berdaftar tanah tersebut. Lebihkurang dua tahun kemudiannya, dalam tahun 1993, perayu pertama telah membeli kesemua saham-saham Metro Murni dariapda pemegang-pemegang saham pihak yang terkemudian itu. Metro Murni sesudah itu berusaha untuk membatalkan penjualan tanah tersebut dan, setelah mengirimkan surat penamatan kepada responden, mengambil milikan semula tanah tersebut. Metro Murni kemudiannya memberikan perayu-perayu pemilikan.

Berikutan dengan permohonan responden tersebut di bawah A. 89 k. 1 Kaedah-kaedah Mahkamah Tinggi 1980 (KMT) untuk pemilikan tanah, Hakim yang bijaksana telah menggunakan bidangkuasa penghakiman terus Mahkamah dan akibatnya telah membuat satu perintah milikan kosong terhadap perayu-perayu tersebut. Perayu-perayu telah merayu, dan di hadapan Hakim-hakim yang bijaksana satu persoalan berbangkit mengenai samada perayu-perayu berada

di atas tanah itu sebagai penceroboh atau pun mereka berada di atas tanah tersebut dengan kebenaran atau di atas persetujuan pendulu dalam hakmilik responden, dan dengan itu samada bidangkuasa penghakiman terus sepertimana yang diberikan oleh A. 89 boleh digunakan sewajarnya terhadap mereka.

Diputuskan:

[1] Aturan 89 k. 1 KMT terpakai ke atas setinggan, secara yang jelas dan mudah. Ianya tidak terpakai kepada penyewa-penyewa yang menangguh-nangguh. Ianya tidak terpakai kepada sesiapa yang memasuki tanah atau yang menghuni dengan persetujuan seseorang pemohon di bawah Aturan tersebut atau mana-mana pendulu dalam hakmilik bagi pemohon yang sedemikian. Ianya tidak terpakai kepada mana-mana orang yang menghuni di bawah harapan sah untuk menerima, daripada Pihak Berkuasa Negeri, dokumen hakmilik keluaran kepada bahagian-bahagian yang mereka menghuni itu.

[2] Ini bukannya merupakan satu kes di mana perayu memasuki tanah tersebut dengan kebenaran atau lesen oleh Metro Murni sebelum responden tersebut memperolehi hakmilik melalui pendaftaran. Selepas pihak berkuasa mendaftar mengendoskan memorial yang sewajarnya atas nama responden pada daftar dokumen hakmilik, kesemua hak pemilikan telah diletakhak kepada responden dan tidak sesiapapun, selain daripada yang dibenarkan oleh responden, boleh secara sahnya membenarkan tanah tersebut diduduki oleh satu pihak ketiga atau memberikan lesen yang sah kepada penghuni yang sedemikian. Sepertimana keadaannya, tiada kebenaran atau lesen telah diberikan oleh responden.

[3] Fakta menunjukkan bahawa perayu-perayu telah menduduki tanah tersebut secara salah di sisi undang-undang. Mereka dengan itu adalah penceroboh. Dalam keadaan ini, perlindungan yang diberikan oleh perkataan-perkataan yang relevan dalam A. 89 tidak merangkumi mereka dan Hakim yang bijaksana telah bertindak dengan betul dalam memberikan relief terus kepada responden.

[Rayuan ditolak]

Case referred to:
Bohari bin Taib & Ors. v. Pengarah Tanah dan Galian [1991] 1 MLJ 343 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 89 r. 1
National Land Code 1965, s. 340
Federal Territory (Planning) Act 1982

For the appellants - T.J. Su; M/s. Cheah Teh & Su
For the respondent - Robert Lazar (H.K. Choong with him); M/s. Catherine Choong & Co.

JUDGMENT

Gopal Sri Ram JCA:

We heard and dismissed this appeal on 22 January 1996. The reasons for our decision now follow.

The short point that arises in this appeal is the applicability, to the facts of this case, of the summary jurisdiction conferred upon the Court by O. 89 of the Rules of the High Court, 1980. Those facts, all of which are undisputed, are as follows.

The respondent is the registered proprietor of a piece of land held under Certificate of Title No. 9018 for Lot No. 55, in the town and district of Kuala Lumpur, which we will, throughout this judgment, refer to as "the said land". It purchased the said land from a company called Metro Murni Sdn. Bhd. ("Metro Murni") under an agreement dated 23 January 1991. The transfer was registered in the respondent's favour on 21 October 1991. That registration conferred upon the respondent, by reason of the provisions of the National Land Code 1965 ("the Code"), a bundle of rights, including the right to immediate possession of the said land. Additionally, it was a term of the agreement of sale and purchase that the respondent shall have vacant possession of the said land.

The said land was, at the time the respondent became its registered proprietor, indeed vacant. There was an old building on it. But it was unoccupied. The respondent wanted to construct a petrol station on the property but it was unable to obtain approval for this from the relevant authorities.

The first time the respondent heard anything further about the said land was when the Kuala Lumpur City Hall issued an enforcement notice dated 12 February 1993 to the respondent, citing the latter for a breach of the Federal Territory (Planning) Act 1982. The gist of the complaint was that a building had been constructed upon the said land without any approval from City Hall.

On receiving this notice the respondent caused inquiries to be made and was quite shocked by what it discovered. The gate that was meant to keep trespassers out of the property had been broken. The old building that had been on the land had been demolished. In its place were several other buildings which included an office and a showroom for cars. There were two sign-boards atop one of the buildings. One was that of the first appellant; the other of the second appellant. It was quite plain for all to see that the appellants were carrying on business on the said land. There is no doubt that they were doing so without the respondent's consent.

The respondent lost no time in consulting solicitors who wrote to the appellants and all those in occupation of the said land asserting that they (the appellants) were trespassers and demanding that they vacate it. The appellants too

consulted solicitors. There then followed some correspondence between the respondent's solicitors and those of the appellants. In a gist, the appellants denied that they were trespassers and alleged that the sale of the said land to the respondent had been aborted.

The respondent then took out a summons under O. 89 and claimed the summary relief made available by that Order. The appellants resisted the respondent's summons. The appellants' resisted the summons on the following facts which they led in evidence.

In February 1993, the first appellant purchased all the shares of Metro Murni from the latter's previous shareholders. Thereafter, Metro Murni (in reality the first appellant), proceeded to terminate the sale to the respondent. Following the letter of termination, Metro Murni re-took possession of the said land from the respondent. It then let the appellants into the possession.

The appellants accordingly, justify their occupation on the ground that they are upon the land with the consent of, or by licence of the respondent predecessor in title. This was the entire basis on which the case was argued before the High Court and before us.

The learned Judge who heard the summons made an order for vacant possession against the appellants. We are entirely in agreement with the decision of the learned Judge and her reasons therefor.

In order to appreciate the arguments advanced in support of the appeal, it is necessary to hearken to the words of r. 1 of O. 89 which is in the following terms:

> 1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

The rule has always been read, as it ought to be read, as applying to squatters, pure and simple. It does not apply to tenants who are holding over. It does not apply to one who enters upon land or who remains in occupation with the consent of the applicant under the Order or any predecessor in title of such an applicant. It does not apply to persons who are in occupation under a legitimate expectation of receiving, from the State Authority, issue documents of title to the portions they occupy. See, *Bohari bin Taib & Ors. v. Pengarah Tanah dan Galian* [1991] 1 MLJ 343.

It was argued for the appellants that they were in occupation of the land with the consent of Metro Murni, the respondent's predecessor in title, and that the summary jurisdiction conferred by the Order could not therefore be invoked

against them. It followed, so the argument went, that the Judge was wrong in making the order for possession in reliance upon the summary jurisdiction.

The fallacy that lies at the heart of this rather ingenious argument lies in the proposition that consent or licence to occupy land may only be given by one who is empowered by law to give such consent or to grant such a licence. In the ordinary case, it is the registered proprietor, in whom is vested the right of ownership, who may give consent or grant a licence to occupy. However, cases may arise where the registered proprietor has placed such power in the hands of some other person, for example, a tenant of the land in question. In such a case, the consent or licence granted by that other may bind the registered proprietor and so render the occupation by the occupier lawful.

But the facts relied upon by the appellants do not come within either category. This is not a case where the appellants came onto the said land with Metro Murni's consent or licence before the respondent acquired title by registration. Had that happened, Metro Murni would, as the registered proprietor of the said land, have had the right to deal with the land and any rights of occupation which they created in favour of a third party may have been binding upon the respondent as the successor in title.

However, in the present case, Metro Murni had divested itself of all rights which the law conferred upon it as a registered proprietor of the said land. That happened when the relevant registering authority endorsed the appropriate memorial in the respondent's favour upon the register document of title. Thereafter, all rights of ownership were vested in the respondent and no persons, other than one authorised by the respondent, could validly consent to the said land being occupied by a third party or grant a valid licence to such an occupant.

However, as earlier observed, there was no consent given or licence granted by the respondent or anyone under its authority. In fact, the said land was vacant when the respondent purchased it. The appellants came onto it much later. And their occupation of it is derived from the *prima facie* unlawful act of Metro Murni in re-taking possession otherwise than in accordance with law or with procedure established by law.

The purported termination of the sale and purchase agreement by Metro Murni was, of course, a futile act because of the doctrine of indefeasibility that operates in the respondent's favour. Any attack upon its title, in order to succeed, must come within the parameters of s. 340 of the Code. And it is only after Metro Murni has successfully established its title to the said land is it entitled to re-assume proprietary rights over it.

If we were to accede to the submissions of appellants' Counsel it would amount to driving a coach and four through s. 340 of the Code. No registered proprietor will be safe. All that has to be done is for the vendor to terminate

a sale and purchase agreement, to re-take possession of property without the aid of a Court and then to place someone else in occupation. That, with respect, is not and has never been the law.

In our judgment, the protection given by the relevant words that appear in O. 89 do not extend to the present appellants. The facts which the appellants have relied upon disclose that they are, and have always been, in unlawful occupation of the said land. In a word, they are trespassers.

Despite the eloquence of Counsel for the appellants we were left unconvinced that the machinations employed by the first appellant to place itself in occupation of the said land were lawful. The appeal therefore singularly lacked any merit and was accordingly dismissed with costs. All orders made by the Judge were affirmed. We also ordered that the deposit paid into Court by the appellants be paid out to the respondent to account of taxed costs.

Reported by W.A. Sharif